Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 782

NATIONAL AIRLINES INCORPORATED,
Petitioner

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; DISTRICT LODGE 145, IAM, P. L. SIEMILLER, IAM President; GEORGE M. BROWN, Representative IAM; WARREN WATTS, President and General Chairman, District Lodge 145, IAM; GUS BALLIS, Member of the Negotiating Committee for District 145, IAM; STANLEY OBER, Member of the Negotiating Committee for District 145, IAM; CHARLES STRAKE, Member of the Negotiating Committee for District 145, IAM,
Respondents.

REPLY BRIEF OF PETITIONER

ALFRED L. McCARTHY
1400 First National Bank Building
Miami, Florida 33131
Counsel for Petitioner

HERBERT BROWNELL
25 Broadway
New York, New York 10004

WILLIAM A. NELSON
P. O. Box 2055
Airport Mail Facility
Miami, Florida 33159
Of Counsel

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We think a response is necessary to Respondents' "one final consideration" which suggests that an agreement between the parties makes the case unworthy of consideration by the Court. The contention is at best unsound and possibly misleading for the following reasons:

1. The essential error below is the pronouncement that National (and other carriers) may not discipline

illegal wildcat strikers during the "purposely long and drawn out" period during which the status quo is imposed. The complex reinstatement agreement in no way disposes of the basic question of principle applicable to the recurring wildcat strike issue.

2. The argument (Br. 14) that a major part of the controversy has been put to rest by "adjudication" is surely made facetiously. The adjudication referred to is the decision for which certiorari is sought!

3. The agreement to which the Respondents refer was presented to the Fifth Circuit upon signing, before the oral argument and was discussed at oral argument. Counsel for the Respondents urged several reasons why "these tentative agreements do not affect the questions which are before the Court," *viz*: (a) the many millions of back pay dollars and other benefits sought by the Respondents would be denied if it were determined that the Act did not forbid discharge, and (b) the filing of a law suit by the new hires attacking the back-to-work agreement, litigating their place on the seniority list *vis a vis* the discharged strikers. The Fifth Circuit did not consider that the agreement affected or limited the issues presented, and accordingly issued the decision for which review is sought.

The Union states, (Br. 13) "The situation is singular and nonrecurrent, and therefore does not merit this Court's review." How can the Union so confidently make this assertion when their basis for it is the statement that the strike was ". . . unauthorized by the Union and uncontrollable by it . . ." The fact is, "uncontrollable" situations may recur, by definition, and though neither

unions nor employers want wildcat strikes they happen with ever increasing frequency.

Respectfully submitted,

ALFRED L. MCCARTHY
1400 First National Bank Building
Miami, Florida 33131

Counsel for Petitioner

HERBERT BROWNELL
25 Broadway
New York, New York 10004

WILLIAM A. NELSON
P. O. Box 2055
Airport Mail Facility
Miami, Florida 33159

Of Counsel